

STATE BOARD OF ELECTIONS
STATE OF ILLINOIS

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Daniel W. White

July 21, 2006

Dear Political Committee;

This letter is to make you aware of a proposed amendment to the State Board of Elections Rules and Regulations clarifying a portion of the Campaign Financing Act regulating Nonprofit Organizations. Specifically, the proposed rule addresses filing requirements for Nonprofit Organizations. The proposed amendment follows this letter.

The State Board of Elections is accepting public comment on the proposed amendment through August 31, 2006. All comments should be directed in writing to the General Counsel's office. If you have any questions or need further clarification, please feel to contact the Campaign Disclosure Division at (217) 782-4141.

Sincerely;

Rupert T Borgsmiller, Director
Campaign Disclosure Division

RTB:sm

TITLE 26: ELECTIONS
CHAPTER I: STATE BOARD OF ELECTIONS

PART 100
THE CAMPAIGN FINANCING ACT

Section	
100.10	Definitions
100.20	Official Forms
100.30	Forwarding of Documents (Repealed)
100.40	Vacancies in Office – Custody of Records
100.50	Multiple Filings by State and Local Committees
100.60	Filing Option for a Federal Political Committee
100.70	Reports of Contributions and Expenditures
100.80	Report Forms
100.90	Provision Circumvention
100.100	Proof of Identification; Application for Inspection and Copying (Repealed)
100.110	Loans by One Political Committee to Another
100.120	Receipt of Campaign Contributions
100.130	Reporting by Certain Nonprofit Not-for-Profit Organizations
100.140	Prohibited Contributions – State Property
100.150	Electronic Filing of Reports
100.160	Good Faith
100.170	Sponsoring Entity

AUTHORITY: Implementing Article 9 of the Election Code [10 ILCS 5/Art. 9] and authorized by Section 9-15(3) of the Election Code [10 ILCS 5/9-15(3)].

SOURCE: Amended at 5 Ill. Reg. 1337, effective January 30, 1981; amended at 5 Ill. Reg. 12115, effective October 26, 1981; codified at 6 Ill. Reg. 7211; amended at 7 Ill. Reg. 225, effective December 16, 1982; amended at 14 Ill. Reg. 10824, effective June 22, 1990; amended at 16 Ill. Reg. 6982, effective April 21, 1992; amended at 18 Ill. Reg. 14707, effective September 9, 1994; amended at 21 Ill. Reg. 10044, effective July 21, 1997; emergency amendment at 23 Ill. Reg. 719, effective January 4, 1999, for a maximum of 150 days; amended at 23 Ill. Reg. 6796, effective May 24, 1999; emergency amendment at 24 Ill. Reg. 13039, effective August 9, 2000, for a maximum of 150 days; emergency expired January 5, 2001; amended at 24 Ill. Reg. 14214, effective September 11, 2000; amended at 29 Ill. Reg. 18785, effective November 7, 2005; amended at 30 Ill. Reg. 10261, effective June 1, 2006; amended at 30 Ill. Reg. _____, effective _____.

Section 100.10 Definitions

a) Anything of Value

- 1) Reference: This Part interprets or applies Sections 9-1.4, 9-1.5 and 9-1.12 of the Election Code [10 ILCS 5/9-1.4, 9-1.5, 9-1.12].
- 2) The term "anything of value", as used in Sections 9-1.4, 9-1.5 and 9-1.12 of the Act, includes all things, services or goods regardless of whether they may be valued in monetary terms according to ascertainable market value.
- 3) "Anything of value" which does not have an ascertainable market value may be reported by describing the thing, services or goods contributed, however nothing in this subsection (a)(3) relieves a committee or a contributor of the duty to provide as accurate an assessment of value as possible.
- 4) For purposes of reporting campaign receipts and expenses, income from investments shall be included as receipts during the reporting period they are actually received. The gross purchase price of each investment shall be reported as an expenditure at time of purchase. Net proceeds from the sale of an investment shall be reported as a receipt. During the period investments are held they shall be identified by name and quantity of security or instrument on each semi-annual report during the period. The value of each instrument as of the day the reporting period closes shall be included for each asset held as an investment.
- 5) In addition to the items expressly excluded in the Act, the term "anything of value" shall not be deemed to include:
 - A) Any unreimbursed payments for travel or living expenses related to travel made by an individual who volunteers services on behalf of a candidate or political committee;
 - B) Any news story, commentary, endorsement or editorial of any broadcasting station, newspaper, magazine or other periodical publication;
 - C) Any regular publication by a membership organization, labor union or corporation to its officers, employees, members or stockholders, so long as the membership organization or corporation is not organized primarily for the purpose of influencing nomination for election, or election, of any candidate, or supporting or opposing any question or questions of public policy. However, publications of an extraordinary or special nature to support or oppose a candidate or candidates or a question or questions of public policy would constitute a campaign contribution or expenditure;
 - D) The occasional use of real property for the purpose of conveying information to officers, employees, members or stockholders and their families of a person or whoever as defined in Section 9-1.6 of the Illinois Campaign Financing Act and as defined in Section 100.10(b) of these Rules and Regulations, including but not limited to the use of such premises for the purpose of a candidate communicating directly with such officers, employees, members or stockholders and their families;
 - E) Unrealized appreciation or loss of value of investments during the period they are held.

b) Assets

- 1) Reference: This definition of asset interprets or applies to Section 9-5 of the Election Code.
- 2) An asset is an item of property, other than cash or services, of whatever kind, tangible or intangible, that has either a fair market or salvage value in excess of \$150.

c) Candidate

- 1) Reference: This subsection interprets or applies Section 9-1.3 of the Election Code.
- 2) "Candidate" as that term is defined in Section 9-1.3 of the Act [10 ILCS 5/9-1.3] shall include, but not be limited to by way of limitation:
 - A) A person who circulates or authorizes the circulation of nominating petitions on his behalf for public office;
 - B) An individual who receives contributions or makes expenditures or gives consent for any other person to receive or make expenditures with a view to bringing about his nomination for election or re-election to any office;
 - C) Any judicial incumbent who qualifies for retention.

d) Filing

To constitute a "filing" as used in the Act and in these Rules, the Statement, Report or document must be in apparent and substantial conformity with the requirements of the Act. "Apparent and substantial conformity" requires that the filing contain the following:

- 1) The signature of the person making the filing;
- 2) Completion of all applicable sections of the report; and
- 3) Attachment of all appropriate schedules.

Inadvertent error or omission of a de minimus nature in the completion of report, statement or document shall not be deemed to a "willful failure to file or a willful filing of false or incomplete information" pursuant to Section 9-26 of the Act.

e) Statement of Organization

- 1) Reference: This provision interprets Section 9-3 and 9-7.5 of the Election Code [10 ILCS 5/9-3 and 5/9-7.5].
- 2) A committee officer must, in filling out the Form D-1, use the name which appears on his or her birth certificate, baptismal record, voter's registration card, statement of candidacy or nominating petition, or any other name by which the officer is commonly known in the community in which the officer resides. Aliases created for the purpose of filing under Article 9 of the Election Code may not be used.

f) Person or Whoever

- 1) Reference: This subsection interprets or applies Section 9-1.6 of the Election Code.
- 2) The terms "other organizations" and "groups of persons" as defined in Section 9-1.6 of the Act shall include, but not ~~be limited to, by way of limitation:~~ all ~~for-profit and not-for-profit~~ corporations, labor unions, trade associations or other such groups, religious organizations, fraternal societies, luncheon and dinner organizations, unless any of these groups, other than labor unions, are nonprofit organizations as defined in Section 100.10(i) and 100.130.

g) Political Committee

- 1) Reference: This subsection interprets or applies Section 9-1.9 of the Election Code.
- 2) A person or whoever as defined in the Illinois Campaign Financing Act, Section 9-1.6 [10 ILCS 5/9-1.6] and as defined in Section 100.10(b) of this Part does not qualify as a political committee pursuant to the Illinois Campaign Financing Act by simply making a contribution from his or her personal income or profits regardless of the amount of the donations.
- 3) If a person or whoever solicits or receives funds for political purposes or acts as a conduit for political funds, he or she would, in fact, become a political committee and have to comply with all provisions of the Illinois Campaign Financing Act.

h) Signature

- 1) Reference: This subsection interprets or applies to Sections 9-4, 9-7.5, 9-12 and 9-14 of the Election Code.
- 2) The term "signature" or "signed" as used in Article 9 of the Election Code, and as used in the rules and regulations implementing the Election Code includes electronic signatures attached and made a part of electronic records submitted to the State Board of Elections pursuant to Section 9-28 of the Election Code.

i) "Labor Union" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and that exists for the purpose, in whole or in part, of bargaining with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

j) "Nonprofit Organization" means any organization that is organized on a nonprofit basis that is on file or should be on file with the Business Service Division of the Illinois Secretary of State as required by the General Not-For-Profit Corporation Act of 1980 [805 ILCS 105], a not-for-profit corporation as defined under Section 501 of the Internal Revenue Code (26 USCA 501), organization as defined in Section 527 of the Internal Revenue Code (26 USCA 527), or is registered with the Charitable Trust Bureau of the Attorney General's Office [760 ILCS 55]. Nonprofit organization also applies to any out-of-state organization meeting the requirements within its state's guidelines.

k) "Original Source of Money" means a contributor who makes a contribution directly to the nonprofit organization as defined in Section 5/9-1.4 of the Election Code.

(Source: Amended at 30 Ill. Reg. _____, effective _____)

Section 100.20 Official Forms

- a) Reference: This Section interprets or applies Sections 9-7.5, 9-10(a) and 9-15(1) of the Election Code.
- b) Political committees are required to use only the official forms or photostatic copies of official forms and appropriate schedules approved by the State Board of Elections when filing any disclosure reports except as otherwise permitted under Section 100.80. Alternative methods of reporting are prohibited unless prior written approval has been received by the political committee from the State Board of Elections. Prior written approval will be given based on the compatibility of alternative methods with the Board's present system.

(Source: Amended at 30 Ill. Reg. _____, effective _____)

Section 100.110 Loans by One Political Committee to Another

- a) If a political committee lends or donates funds to a second political committee while the lending or donating committee owes the State Board of Elections a civil penalty assessed under the provisions of Section 5/9-7.5, 9-10, 9-23, or 9-26 of the Election Code [10 ILCS 5/9-7.5, 5/9-10, 9-23, 9-26], the officers of the lending committee shall be jointly and severally personally liable to the extent allowed by law for payment of the civil penalty to the extent of the funds loaned or given.
- b) If a political committee goes out of existence while it owes the State Board of Elections a civil penalty assessed under Section 9-7.5, 9-10, 9-23, or 9-26 of the Election Code [10 ILCS 5/9-7.5, 5/9-10, 9-23, 9-26], any political committee formed within 24 months from the date of the final order imposing a civil penalty assessment on the first committee and composed of one or more of the same officers, or for the same purpose or for the support of the candidacy of the same person, irrespective of office, as the first committee, shall be deemed a successor committee and shall be responsible for payment of the civil penalty of the first committee.
- c) A political committee ~~that which~~ seeks to go out of existence while it is owed money by another political committee must first forgive the debt of the debtor political committee and must amend its reports to show the forgiven debt as a contribution to the debtor committee.
- d) If a political committee seeks to go out of existence after a civil penalty has been imposed upon it pursuant to the Election Code and the rules promulgated thereunder, or if a civil penalty has been assessed by Board staff and such a proceeding is begun or about to begin, the political committee must first pay such civil penalty, or if it lacks sufficient funds to pay such civil penalty in full, pay over to the State Board of Elections such sums as it has in its treasury in satisfaction of the civil penalty. Only upon such payment of the civil penalty, either in full or in part as the case may be, shall the committee be permitted to exit the reporting system established by Article 9 of the Illinois Election Code [10 ILCS 5/Art. 9].

(Source: Amended at 30 Ill. Reg. _____, effective _____)

Section 100.130 Reporting by Certain ~~Nonprofit~~~~Not-for-Profit~~ Organizations

- a) A ~~nonprofit~~~~not-for-profit~~ organization ~~operating in Illinois~~ is required to submit financial reports to the State Board of Elections if it:
- 1) is not a labor union,
 - 2) ~~is registered under the Lobbyist Registration Act, or engages any person, whether paid or not, for lobbying purposes who is registered under the Lobbyist Registration Act;~~
 - 2)3) has not established a political committee; and
 - 3)4) accepts or spends more than \$5000 ~~per year~~ in any 12-month period in the aggregate ~~on both:~~
 - A) supporting or opposing candidates for public office or questions of public policy that are to appear on a ballot at an election; and/or
 - B) ~~for electioneering communications influencing legislative, executive, or administrative action as defined in the Lobbyist Registration Act.~~
- b) Except as provided in subsection (g), each nonprofit organization required to register under Section 5/9-7.5 of the Election Code [10 ILCS 5/9-7.5] shall file pre-election reports of contributions and semi-annual reports of contributions and expenditures at the same times, covering the same reporting periods and containing the same information regarding contributors and recipients of expenditures as required of political committees pursuant to Section 9-10 of the Code. Nonprofit organizations shall be subject to the same civil penalties as political committees for the delinquent filing or non-filing of the above referenced reports as set forth in Section 9-10 of the Code and 26 Ill. Adm. Code 125.425. The following provisions shall apply exclusively to each nonprofit organizations defined under this Part:
- 1) must file all required reports with the State Board of Elections;
 - 2) will not be required to file donations of more than \$500 on a Schedule A-1 within the 30-day period prior to an election; and
 - 3) shall designate a chairman and treasurer that shall constitute the principal officers as required in Section 9-7.5(a)(3) of the Election Code [10 ILCS 5/9-7.5(a)(3)]; and
- c) Nonprofit organizations may cease filing disclosure reports with the Board if they:
- 1) have filed two consecutive semi-annual reports in which they have not made any contributions or expenditures that supported or opposed any candidate, referenda, or made any electioneering communications;
 - 2) have determined they will no longer make any contributions or expenditures to support or oppose any candidate, referenda, or for electioneering communications; and
 - 3) have submitted a letter informing the State Board of Elections that they will no longer function as a nonprofit political organization as defined in Section 9-7.5 of the Election

Code. [10 ILCS 5/9-7.5]

- d) To comply with the specific reporting provisions of Section 9-7.5(b), nonprofit organizations may establish a separate nonprofit political committee whose exclusive function is to receive or make contributions and/or make expenditures to support or oppose candidates or questions of public policy. To facilitate this option, nonprofit organizations shall create a separate segregated fund, where contributions shall be deposited or made as defined in Section 5/9-1.4 and where expenditures shall be dispersed as defined in Section 5/9-1.5. If a nonprofit organization chooses this option, the disclosure of any deposits of money into the segregated fund shall report the original source of the money and not the name of the nonprofit organization.
- e)b) Reports containing the information required by statute shall be submitted on forms designed and supplied by the State Board of Elections or upon computer-generated forms conforming to those designed by the State Board of Elections. Pursuant to Section 9-28 of the Election Code, each nonprofit organization that exceeds the threshold of \$10,000, must continue thereafter to report electronically until it dissolves.

(Source: Amended at 30 Ill. Reg. _____, effective _____)

Section 100.160 Good Faith

- a) For purposes of this Section, "contributor" includes the terms "lender" and "endorser". A committee acts in good faith under 10 ILCS 5/9-7.5, ~~5/9-11~~, 9-12, 9-13, and 9-14 if:
- 1) its written solicitation for funds includes a clear written request for the name of the contributor's employer and the occupation of the contributor;
 - 2) in the event it receives a contribution lacking the name of the contributor's employer and occupation of the contributor in circumstances where such information is required, it makes at least one effort to obtain the missing information; and
 - 3) in the event its request for information is unanswered, the committee includes in its report the best and most current information it may have from whatever source, including its own records and earlier reports, about the name of the contributor's employer and the occupation of the contributor.
- b) The request shall appear in a clear and conspicuous manner on any response material contained in the solicitation.
- c) An effort to obtain missing information must either be in writing or oral documented by ~~a~~ writingwriting, and must be made on or before the close of the reporting period in which the contribution or loan was received. The request must clearly ask for the missing information and must contain no other language except thanks to the contributor or lender for the contribution or loan. If the request is in writing it must be accompanied by a pre-addressed return postcard or envelope.
- d) If the name of the employer of a contributor that is required to be reported under Article 9 of the Election Code is unknown at the time the contribution must be reported, a good faith effort having been made to secure such information, the contribution may be reported without the information. However, if the omitted information subsequently becomes known to the committee, the report that omits the information must be amended to add the information.

- e) For the purpose of this Section, "employer" includes all natural and non-natural persons, including but not limited to corporations, partnerships and unincorporated associations.

(Source: Amended at 30 Ill. Reg. _____, effective _____)